S.B.CIVIL WRIT PETITION NO.2359/1995
(Ganpat Singh v. Labour Court, Jodhpur & Anr.)

DATE OF ORDER :: 27th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Mehta, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

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By this petition for writ validity, propriety and correctness of the award dated 27.6.1995 passed by the Labour Court, Jodhpur is under challenge. Learned Labour Court, Jodhpur by the award aforesaid held that there was no illegality in terminating workman Shri Ganpat Singh from service on 20.8.1986.

In brief, the factual matrix of the case is that the appropriate government under its notification dated 23.1.1992 referred an industrial dispute for its adjudication to Labour Court, Jodhpur in following terms:-

> "क्या अधिशाषी अभियन्ता, 21वां खण्ड, इन्द्रा गॉधी नहर परियोजना, जैसलमेर द्वारा उनके श्रमिक श्री गणपतसिंह पुत्र श्री पृथ्वीसिंह (जिसका प्रतिनिधित्व श्री विजय मेहता, सदस्य कार्यकारिणी, राजस्थान ट्रेड यूनियन कॉग्रेस, सोजतीगेट, जोधपुर द्वारा किया गया है) को दिनांक 20.8.86 से सेवामुक्त करना उचित एवं वैध है?यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है?"

In statement of claim the case of the petitioner was that the appointment was given to him by the respondent employer on 1.12.1985 as a daily rated employee but for no just and valid reason under

an order dated 18.7.1986 he was terminated from service w.e.f. 20.8.1986. According to the workman he was in continuous employment of the employer and, therefore, his termination from service without assigning any reason was nothing but a retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") without adhering mandatory condition precedent to do so as prescribed under Section 25-F of the Act of 1947. The petitioner also urged before the Labour Court that alongwith him number of other workmen were also retrenched from service but except the petitioner all others were re-employed, as such a conscious discrimination was made by the employer with the petitioner by not re-employing him in service. Learned Labour Court by the award impugned held that appointment of the workman (petitioner) was for a specific work and after completion of that work there was no need to continue him in service and as such his termination from service is under exception category to the retrenchment as defined under Section 2(oo) of the Act of 1947. No discussion is made in the award impugned with regard to the allegation of the petitioner that certain persons who were terminated alongwith him were re-employed by the employer but the finding is given that such re-employment is of no consequence as on that basis no presumption could be drawn about non-completion of the specified work for that the petitioner was recruited.

Learned counsel for the petitioner while giving challenge to the award impugned mainly emphasised that Sarva Shri Ramrakh, Pokarram, Bishnaram, Guman Singh, Mangilal, Kachhaw Singh, Punmaram, Najir Khan, Mularam, Goparam and Daularam were the persons similarly situated who were terminated from service alongwith the petitioner but they were re-employed by the respondent employer without adopting the same course for the petitioner. Learned Labour Court failed to appreciate the discrimination among the similarly situated persons.

In reply to it, the stand of the respondent employer is that all the persons named above were re-employed as a consequent to an agreement arrived with them during conciliation proceedings and as the petitioner at the relevant time did not raise any industrial dispute, therefore, there was no question of his re-employment. In pursuant to an order passed by this Court on 3.4.2007 a copy of the agreement is also placed on record. From perusal of the agreement it is apparent that the respondent employer re-employed atleast 11 workmen who were terminated alongwith the petitioner. The petitioner for all purposed was a person similarly situated to those 11 persons, therefore, while entering into an agreement with those 11 workmen it was obligatory upon the respondents to extend the same benefits qua the petitioner also. The petitioner was denied re-

employment solely for the reason that he was not part of an industrial dispute raised by the union. I do not find any justification in that. All the persons irrespective of the fact that they have raised their dispute through union or individual capacity if are at similar pedestal deserve to be treated uniformly. The employer once have re-employed similarly situated persons by an agreement should have extended the same benefit qua the petitioner too. Learned Labour Court by the award impugned failed to appreciate the conscious discrimination made with the petitioner by the employer, as such the award impugned can be safely said to be perverse.

Accordingly, this petition for writ is allowed. The award impugned dated 27.6.1995 is quashed. The petitioner is declared entitled to be re-employed with the respondents from the date the employer re-employed other similarly situated persons, reference of whom is given above, however, he shall not be entitled for any back wages though all notional benefits such as continuity in service and fixation of pay, grant of semi permanent and permanent status shall be given to him.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.